

§ 845. Certain reinsurance agreements**(a) Allocation in case of reinsurance agreement involving tax avoidance or evasion**

In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

- (1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,
- (2) recharacterize any such items, or
- (3) make any other adjustment,

if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper amount, source, or character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(b) Reinsurance contract having significant tax avoidance effect

If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year).

(Added Pub. L. 98-369, div. A, title II, §212(a), July 18, 1984, 98 Stat. 757; amended Pub. L. 108-357, title VIII, §803(a), Oct. 22, 2004, 118 Stat. 1569.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-357 substituted “amount, source, or character” for “source and character” in concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §803(b), Oct. 22, 2004, 118 Stat. 1569, provided that: “The amendments made by this section [amending this section] shall apply to any risk reinsured after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE

Pub. L. 98-369, div. A, title II, §217(d), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Subsection (a) of section 845 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

“(2) Subsection (b) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984.”

§ 846. Discounted unpaid losses defined**(a) Discounted losses determined****(1) Separately computed for each accident year**

The amount of the discounted unpaid losses as of the end of any taxable year shall be the sum of the discounted unpaid losses (as of such

time) separately computed under this section with respect to unpaid losses in each line of business attributable to each accident year.

(2) Method of discounting

The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year shall be the present value of such losses (as of such time) determined by using—

- (A) the amount of the undiscounted unpaid losses as of such time,
- (B) the applicable interest rate, and
- (C) the applicable loss payment pattern.

(3) Limitation on amount of discounted losses

In no event shall the amount of the discounted unpaid losses with respect to any line of business attributable to any accident year exceed the aggregate amount of unpaid losses with respect to such line of business for such accident year included on the annual statement filed by the taxpayer for the year ending with or within the taxable year.

(4) Determination of applicable factors

In determining the amount of the discounted unpaid losses attributable to any accident year—

- (A) the applicable interest rate shall be the interest rate determined under subsection (c) for the calendar year with which such accident year ends, and
- (B) the applicable loss payment pattern shall be the loss payment pattern determined under subsection (d) which is in effect for the calendar year with which such accident year ends.

(b) Determination of undiscounted unpaid losses

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term “undiscounted unpaid losses” means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer.

(2) Adjustment if losses discounted on annual statement

If—

- (A) the amount of unpaid losses shown in the annual statement is determined on a discounted basis, and
- (B) the extent to which the losses were discounted can be determined on the basis of information disclosed on or with the annual statement,

the amount of the unpaid losses shall be determined without regard to any reduction attributable to such discounting.

(c) Rate of interest**(1) In general**

For purposes of this section, the rate of interest determined under this subsection shall be the annual rate determined by the Secretary under paragraph (2).

(2) Determination of annual rate

The annual rate determined by the Secretary under this paragraph for any calendar